

Bankruptcy Group Of The Year: Cleary

By Rick Archer

Law360 (January 27, 2020, 4:51 PM EST) -- Cleary Gottlieb Steen & Hamilton LLP closed a deal for the purchase of Sears, helped a major investor navigate PG&E's bankruptcy, and represented creditors in headline-making international bankruptcies to earn a spot among Law360's 2019 Bankruptcy Groups of the Year.

Cleary's work on the Sears Holdings Corp. bankruptcy in representing ESL Investments, a firm owned by former Sears CEO Edward Lampert and a major Sears creditor, has kept it busy all year, starting with the company's Chapter 11 auction last January.

The process of getting to the sale wasn't easy — Cleary bankruptcy partner Sean O'Neal said the company's board talked liquidation more than once — but ultimately ESL closed on a \$5.2 billion going-concern sale for 425 Sears and Kmart retail locations.

Squabbles about the details of the deal continued throughout the year, on issues ranging from the proper method of calculating the value of hundreds of millions of dollars in retail inventory to the ownership of property adjacent to Sears' headquarters complex. The last disputes only reached a settlement a few weeks ago.

"The Sears case highlights the soup to nuts issues we deal with. There were a lot of complexities and turns," bankruptcy partner Lisa Schweitzer said.

The firm has also been advising a significant equity holder in Pacific Gas & Electric as the U.S.'s largest utility goes through its own Chapter 11. The attorneys said work on this case has been complicated by the sheer number of parties involved, ranging from homeowners and insurers claiming losses from massive wildfires allegedly sparked by PG&E equipment to federal regulators disputing the utility's attempts to reject electric supply contracts.

"We are leaders and we take lead positions in complex cases," Schweitzer said.

O'Neal said this kind of expertise is important in an increasingly "crowded" restructuring environment, with more financing sources and more involved creditors.



"Groups are forming early. Creditors are trying to stake out a position well ahead of any credit event," he said.

The rewards for doing so are potentially significant, O'Neal said. "Those who get involved and get involved early and quickly get a chance to shape the transaction," he said.

They said one matter that required creative thinking was the \$400 million out-of-court restructuring of retail broker Crossmark Holdings Inc.

"We had to find a way to come up with a way to get financing pending our ability to get 100% consent," O'Neal said.

The answer proved to be priming and super lien facilities, and with those arranged and the settlement of a class-action settlement that had been holding back the restructuring, it became a matter of getting unanimous consent.

"We identified what the holdout creditors needed and we made it happen," O'Neal said.

In international matters, Cleary represented the ad hoc bondholder group in the \$20 billion restructuring of Brazilian telecommunication company Oi SA, the largest in the nation's history, in an American case that included an unsuccessful attempt by a different bondholder group to modify the Chapter 15 recognition order.

The firm also represented Punjab National Bank in the bankruptcy proceedings of two companies in the international jewelry empire of Indian billionaire Nirav Modi. Modi stands accused of defrauding \$2 billion from PNB in the largest bank fraud in Indian history, and with executives in his U.S. companies implicated in the fraud, Cleary moved both to get a trustee to oversee the companies and an examiner to look at the accusations.

Cleary is extremely well positioned to handle these kinds of cross-border matters, the firm said.

"We have restructuring experience on every continent," Schweitzer said

Over the next year they said they expect to see "interesting" middle market work and work in the pharmaceutical, energy and retail industries.

"We're pretty excited about the year to come," O'Neal said.

--Editing by Adam LoBelia.